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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/571,665	03/10/2006	Leonardus Johannes Temming	903-183 PCT/US	9735
23869	7590	12/14/2007		
HOFFMANN & BARON, LLP 6900 JERICHO TURNPIKE SYOSSET, NY 11791			EXAMINER DEUBLE, MARK A	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 12/14/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/571,665

**Applicant(s)**

TEMMING ET AL.

**Examiner**

Mark A. Deuble

**Art Unit**

3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15, 16, 18-20, 28, 33, 34 and 38-46 is/are rejected.
- 7) ☒ Claim(s) 17, 21-27, 29-32 and 35-37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                                                                  |                                                                                        |
|----------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                      | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                             | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/10/2006</u> | 6) <input type="checkbox"/> Other: ____                                                |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 15-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 15, 20 and 28, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 15, 18-19 and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by British document number 297,230.

The British document shows an egg washing and conveying device. The device includes a substantially cylindrical engagement member designed to be flexible at least at its circumference formed by a brush 1/2/3 with bristles that extend transversely over a support track 38. The support track is formed from a strip of flexible material with its front and rear end fixed at a distance from one another at 44 such that the material bulges upwards to an elevated portion

(see the convex area of the track near the right side attachment point 44 in Fig. 3). The engagement member rotates about its axial axis in order to advance the products along the support track from between a first conveyor 22/30 supplying eggs with a distance therebetween and a second conveyor 40 which removes the eggs with a distance therebetween. As it does this, the engagement member engages on the eggs on the upward part of the elevated portion of the track. Thus the British document shows all the structure required by claims 15, 18-19, and 38-39.

3. Claims 15 and 38-39 are rejected under 35 U.S.C. 102(b) as being anticipated by Reading (U.S. Patent No. 3,272,309).

Reading shows an egg conveying device that includes a substantially cylindrical engagement member 10 designed to be flexible at least at its circumference that extends transversely over a support track 36 with an elevated portion. The engagement member rotates about its axial axis in order to advance the products along the support track from between a first conveyor 12 supplying eggs with a distance therebetween and a second conveyor 14 which removes the eggs with a distance therebetween. As it does this, the engagement member engages on the eggs on an upward part of the elevated portion of the track. Thus the Reading shows all the structure required by claims 15 and 38-39.

4. Claims 28, 33-34 and 44-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Leverett (U.S. Patent No. 4,273,649).

Leverett shows a fruit conveying device that is capable would be capable of conveying eggs. The device includes a first substantially cylindrical engagement member designed to be flexible at least at its circumference formed by a brush 81a with bristles that extend transversely

over a support track 59a. Downstream of the first engagement member, as seen in the conveying direction, there is arranged a second substantially cylindrical engagement member designed to be flexible at its circumference also formed by a brush 83a with bristles that extend transversely over the support track. Both engagement members rotate in the same direction about their axial axes in order to advance the products along the support track between a first conveyor 20 supplying products with a distance therebetween and a second conveyor 80 for removing the products with a distance therebetween, but the first engagement member has a higher circumferential velocity than the second engagement member during use Col. 6, ln. 4-10). Thus Leverett shows all the structure required by claims 28, 33-34 and 44-45.

5. Claims 15-16, 20, 26-27, 38-40 and 41-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Troiano et al. (U.S. Patent No. 3,127,172).

Troiano shows a conveyor device conveying substantially round products between a first conveyor 11 supplying articles thereto with a distance between them and a second conveyor removing products with a distance between them 13 that is less than on the first conveyor. The device includes a support track 40, and first and second substantially cylindrical engagement members 17 and 16, which extend transversely over the support track with respect to the conveying direction and which are designed to be flexible at least at its circumference, in order to engage on the products on the support track. Both engagement members rotate about their axial axes in order to advance the products along the support track. The support track has a higher part 25, a transition piece 36, which adjoins the higher part downstream of the first engagement member, as seen in the conveying direction, and a lower part 24, which adjoins the transition piece. The first engagement member is arranged over the higher part of the support

track, in the vicinity of the transition piece, and the second substantially cylindrical engagement member being is arranged substantially at the transition piece in order to engage on the products which, during use are situated on the transition piece and a part of the lower part of the support track. While the first and second engagement members rotate at the same speed, the first member is capable of being rotated at a higher speed than the second member, such as by applying a brake force to the second engagement member or through slipping of the drive 30. Thus Troiano shows all the structure required by claims 20, 27, and 41-43.

In regard to the remaining claims, it should be noted that the labeling of the first and second engagement members may be reversed so that the member 16 is the first engagement member and the member 17 is the second engagement member. When this is done, the first engagement member would contact a product on an upward part of an elevated portion of the track 40 along section 24 and the second engagement member would be arranged downstream thereof. Thus Troiano also shows all the structure required by claims 15-16, 26 and 38-40.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 29 and 40 are rejected under 35 U.S.C. 103(a) as being obvious over Reading in view of Leverett.

Reading shows generally all that is required by the claims except for the brush with bristles required by claim 29 and the greater spacing of articles on a second conveyor as required

by claim 40. However, Leverett shows that brushes with bristles are art recognized equivalents with the flexible member of Reading for conveying fragile articles between conveyors and therefore the use of a brush with bristles is deemed to have been an obvious design choice absent some disclosure in the applicant's specification of some unusual advantage or result. *In re Kuhle*, 188 USPQ 7 (CCPA 1975).

In regard to the limitation of claim 40, it should be noted that while the spacing on the second conveyor shown is the same as the spacing on the first conveyor, it should be noted that since the apparatus of Reading is intended to be used in egg collecting equipment, it would have been obvious to one of ordinary skill in the art at the time of the invention to connect it with an egg packaging conveyor. Such a conveyor would convey the eggs with a reduced spacing to when bringing them together to form a group to be packaged.

8. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leverett.

In regard to the limitation of claim 46, it should be noted that while the spacing on the second conveyor shown is the same as the spacing on the first conveyor, it should be noted that since the apparatus of Leverett is intended to be used in fruit grading equipment, it would have been obvious to one of ordinary skill in the art at the time of the invention to connect it with a fruit packaging conveyor. Such a conveyor would convey the fruit with a reduced spacing to when bringing them together to form a group to be packaged.

***Allowable Subject Matter***

9. Claims 17, 21-27, 29-32, and 35-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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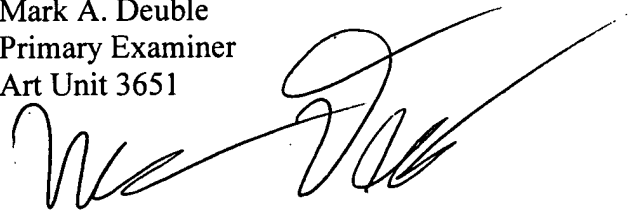
***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mark A. Deuble whose telephone number is (571) 272-6912. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mark A. Deuble  
Primary Examiner  
Art Unit 3651

A handwritten signature in black ink, appearing to read 'Mark A. Deuble', is written over the printed name and title.

md